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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,622	09/30/2003	Stephen Friend	66205-0001	4195

10291 7590 05/21/2004

RADER, FISHMAN & GRAUER PLLC  
39533 WOODWARD AVENUE  
SUITE 140  
BLOOMFIELD HILLS, MI 48304-0610

EXAMINER

SZUMNY, JONATHAN A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 05/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/674,622

Applicant(s)

FRIEND, STEPHEN

Examiner

Jon A Szumny

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

This is the first office action for application number 10/674,622, Bottle Retainer, filed on September 30, 2003.

### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

More specifically, in line 1 of the abstract, "The present invention provides a" should be replaced with --A--.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter that the applicant regards as his invention.

Claims 5 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "said affixing layer" in line 1 while claim 6 recites "said first opening" and "said second opening" in line 2. There is insufficient antecedent basis for these limitations in the claims.

For the purposes of this office action, in claim 5, the Examiner will assume "affixing layer" is --affixing portion-- so as to correspond with claim 1. In claim 6, it appears lines 1-2 should read --wherein a first opening of said at least two openings is smaller than a second opening of said at least two openings--.

For clarity, the Examiner is assuming that the "nail" is only *functionally* included in claim 5.

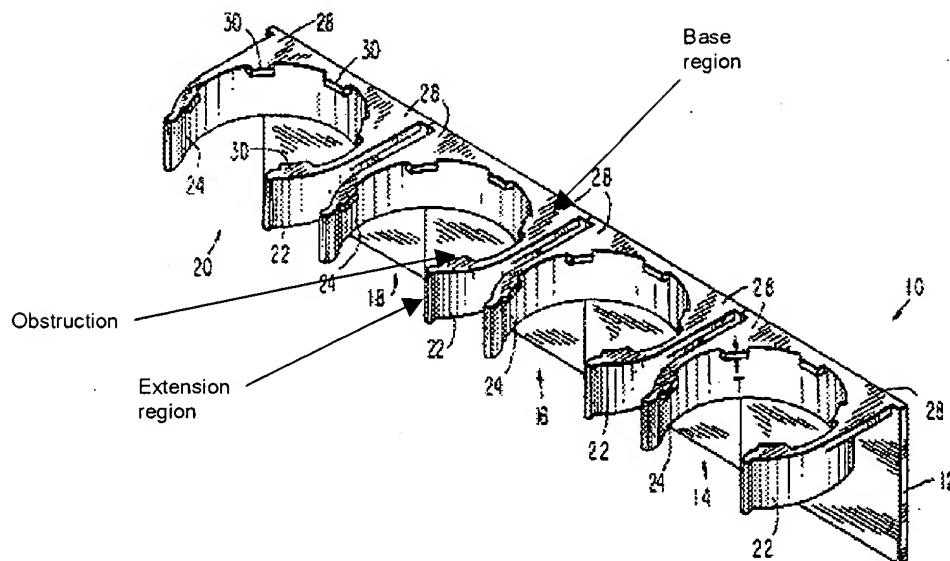
### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 7-10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent number 5,655,673 to Weterrings et al.



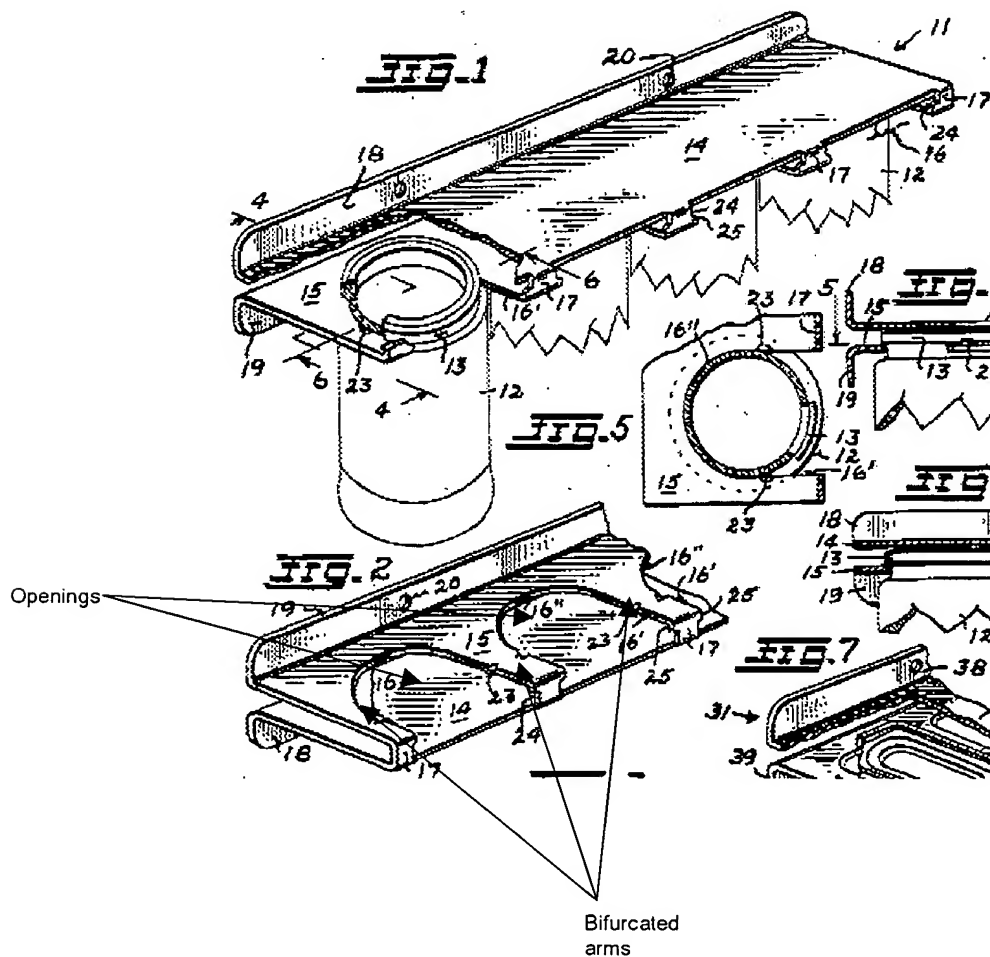
Weterrings et al. <sup>6</sup>73 discloses a retainer (above) comprising a base having an affixing portion (12) and a retaining portion (14,16,18,20, generally) forming at least one opening/receiving means (between 22,24), the affixing portion having a back side and a front side, wherein the back side is adapted for mounting the retainer to a surface, wherein the opening is inherently adapted to slidably receive a bottle therein, wherein the retaining portion further comprises at least three bifurcated arms/receiving means (22,24, above) wherein the arms form at least two openings (between 22,24 above) that can inherently slidably pass bottles therethrough, wherein the bifurcated arms have a base region (above) and an extension region (above), wherein the bifurcated have at least one obstruction (above) positioned on the extension region in coordination with the openings thereby inherently restricting accidental bottle disengagement, wherein the back side of the affixing portion further includes an adhesive layer (32) that is adapted

3  
5/17/01

Art Unit: 3632

to mount the retainer to a surface, wherein the at least two openings are equivalent in size.

Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent number 2,921,690 to Smith et al.

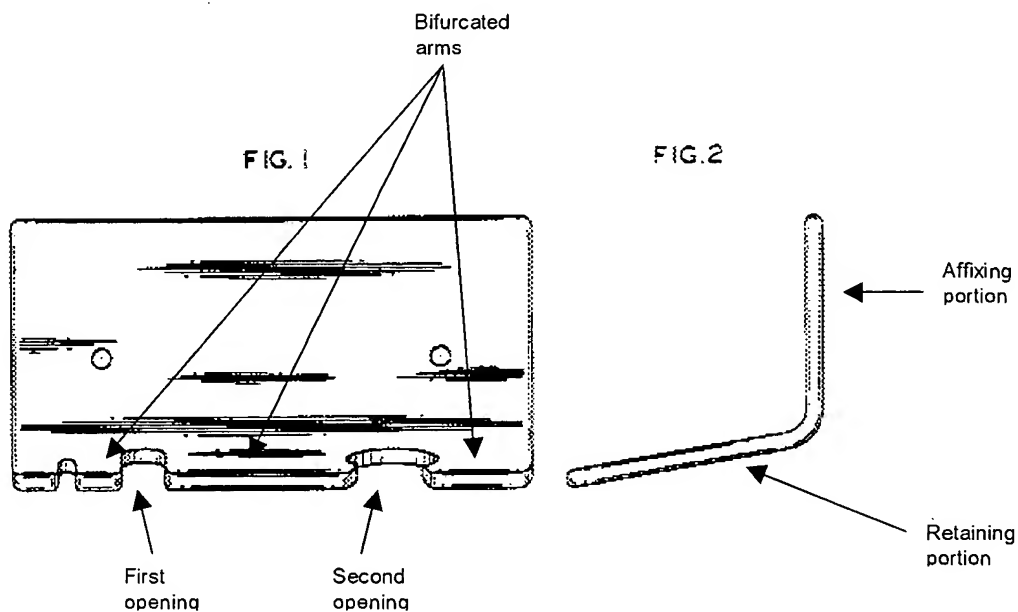


Smith et al. '690 discloses a retainer (above) comprising a base having an affixing portion (19) and a retaining portion (15, generally), the affixing portion having a

Art Unit: 3632

back side and a front side, the back side for mounting the retainer to a surface (column 2, lines 26-30), the retaining portion forming at least one opening (above) that is inherently adapted to slidably receive a bottle therein, wherein the retaining portion further comprises at least three bifurcated arms (above) that form at least two openings inherently for slidably passing bottles therethrough, wherein the affixing layer/portion is further inherently adapted to allow at least one nail to pass therethrough (through portion 20) so as to mount the retainer to a surface.

Claims 1, 2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent number Des. 262,504 to Flynn.



Flynn '504 discloses a retainer (above) comprising a base having an affixing portion (above) and a retaining portion (above), the affixing portion having a back side and a front side, the back side can inherently mounting the retainer to a surface, the retaining portion forming at least one opening (above) that is inherently adapted to

Art Unit: 3632

slidably receive a bottle therein, wherein the retaining portion further comprises at least three bifurcated arms (above) that form at least two openings inherently for slidably passing bottles therethrough, wherein the first opening is smaller than the second opening.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. British Patent number 8986, Swiss Patent number 159,912, Bennett '366, Otteren '914, Kandlbinder '509, Greis '612, Fleischer '538 and Belokin et al. '827 divulge various retainers each with affixing portions and retaining portions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (703) 306-3403. The examiner can normally be reached on Monday-Friday 8-4.

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.



Art Unit: 3632

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

A handwritten signature in black ink, appearing to read 'Jon Szumny', with a stylized, cursive script.

Jon Szumny  
Patent Examiner  
Technology Center 3600  
Art Unit 3632  
May 17, 2004